

Thus the ultimate question in this case resolves itself into the narrow issue of whether the relevant date for determining the rights of the defendant is the 13th January 1954 when proceedings were commenced or the 3rd December 1954 when the case was heard. No authorities were cited by Counsel on either side to assist the Court in the determination of this issue but fortunately valuable judicial guidance is to be obtained from Mackinnon L.J.'s observations in *Benninga (Mitcham) Ltd. v. Bijstra*⁽³⁾ at page 62:—

"Normally, no doubt, a plaintiff's cause of action must exist at the date of his writ or plaint. The plaintiff's cause of action is a claim to the possession of their free-hold against a tenant who has received due notice to quit. That cause of action existed on March 20th. The Rent Restriction Acts do not forbid the trying of an action; they only prohibit the granting of relief to which the common law would entitle the plaintiff, unless certain conditions have been fulfilled. The question whether those conditions exist must be determined when the question whether the relief claimed may be granted has to be decided, namely, at the hearing of the action."

It follows, therefore, that the relevant date for determining the rights of the parties is the date of the hearing. When this action was heard on the 3rd December 1954, the defendant had ceased to be the legal personal representative of Lee Ah Lien. Consequently she was not entitled to rely upon the provisions of the Control of Rent Ordinance at that date to defeat the plaintiff's claim to possession at common law. In the result this appeal succeeds.

Appeal allowed.

Solicitors: R. C. H. Lim & Co.; Lee & Lee.

X & CO. v. COMPTROLLER OF INCOME TAX

[A. C. J. (Murray-Aynsley C.J.) April 23, 1955]

[Singapore — District Court Appeal No. 20 of 1954]

Income Tax Ordinance, 1947, s. 13(1)(g) — Trust established for charitable purposes — Meaning of — Whether a general trust a portion of whose income is devoted to charitable purposes comes within the scope of the exemption.

By an Indenture, a settlor, now deceased, conveyed and assigned properties in Singapore to trustees to be held on trust for certain purposes, all of which were admittedly non-charitable with the exception of two which provided for the distribution of a sum of \$3,200 per annum (either in cash or in the purchase of rice or corn) for the poor in a certain part of Arabia. It was admitted that these two purposes were "charitable" within the meaning of s. 13(1)(g) of the Singapore Income Tax Ordinance.

The Comptroller did not accept the trustees' claim that the income amounting to \$3,200 applied for the purpose described above was exempt under s. 13(1)(g) as the income of "a trust established for charitable purposes only" and accordingly the \$3,200 was included in the assessment on the trustees.

Held: (1) s. 13(1)(g) of the Income Tax Ordinance, 1947, which exempted from taxation the income of a charitable institution or of any body of persons or trust establishment for charitable purposes only applies to trusts or persons natural or juristic who have an income which is devoted to charitable purposes and who can be assessed; (2) the appellants who are trustees for the purposes of the trust generally and who have an income part of which is devoted to charitable purposes do not come within the scope of the provision.

INCOME TAX APPEAL.

On behalf of the trustees it was contended that the word "trust" in s. 13(1)(g) was capable of more than one meaning: in such circumstances the ordinary canons of construction required, firstly, that the intention of the legislature should be ascertained and effect given to that intention provided that no violence was done to the wording of the Ordinance; secondly, that of two possible constructions the one which led to a just and reasonable result was to be preferred; thirdly, that a taxing statute must be construed strictly against the Revenue and liberally in favour of the subject. It was further contended that the part of the disposition which set aside \$3,200 per annum for charitable purposes was a separate trust. The word "trust" was sometimes used to describe the whole of a document which might contain many different dispositions, while in other cases the word was applied to describe particular dispositions within the "trust" so that a single document might create more than one "trust": trusts were separate when they were capable of separate enforcement and the particular disposition in the settlement before the Board which set aside \$3,200 per annum for charitable purposes was a disposition capable of separate enforcement. It was accordingly claimed that the income amounting to \$3,200 constituted the income of a trust established for charitable purposes only and was exempt from tax.

On behalf of the Comptroller it was contended that the decision in the U.K. case of *Lawrence & Ors. v. C.I.R.*, 23 T.C. 333 was conclusive against the appeal before the Board. In the *Lawrence* case it had been admitted that the trust in question was not a trust established for charitable purposes within the first branch of s. 37(1)(b) of the U.K. Income Tax Act, 1918, and the case was argued on the grounds that the trust in question fell within the second branch of the heading. The language of s. 13(1)(g) of the Singapore Income Tax Ordinance was practically identical with that of the first branch of s. 37(1)(b) of the U.K. Act but it was significant that the second branch of s. 37(1)(b) was nowhere to be found in the Singapore Ordinance. If the Singapore legislature had intended to exempt from tax the income of all charitable trusts a provision on the lines of the second branch of s. 37(1)(b) would have been inserted in the Singapore Ordinance, in which event the income of \$3,200 in the appeal before the Board would have been exempt from tax. It was accordingly submitted that the income amounting to \$3,200 applied for charitable purposes did not constitute the income of a trust established for charitable purposes only within the meaning of s. 13(1)(g) of the Income Tax Ordinance and that the appeal should be dismissed.

The Board dismissed the appeal, the majority holding that (a) there was no charitable institution nor was there any body of persons or trust established wholly or even partly for charitable purposes; (b) the fund from which the income was derived was neither wholly nor partly the property of a charitable institution, body of persons or a trust.

The trustees appealed to the High Court.

T. E. Atkinson for the appellants.

A. V. Winslow (Crown Counsel) for the respondent.

Murray-Aynsley C.J.: — This appeal concerns the interpretation of section 13(1)(g) of the Income Tax Ordinance (No. 39 of 1947).

The facts are set out in the case stated by the Commissioners.

The provision exempts from taxation the income of any charitable institution or of any body of persons or trust established for charitable purposes only.

Here the appellants draw a large income from property of which a portion has to be paid for charitable purposes. It seems to me that the word "trust" means some persons natural or juristic who have an income and who can be assessed. When they come within the scope of the provision all their income is exempted. I do not think that the appellants who are trustees for purpose of the trust generally and who have an income part of which is devoted to charitable purposes come within the scope of the provision.

Until the trustees make a payment out of funds in their hands it is impossible that any particular part of their income is devoted to charitable purposes.

We are not concerned directly with the proviso but I think that it sheds light on the meaning of the word "trust". It appears that the legislature contemplated something of the type of which the Singapore Improvement Trust is an example.

In the circumstances I dismissed the appeal with costs.

Appeal dismissed.

Solicitors for the appellant: *Allen & Gledhill.*

ONG ENG GUAN v. PUBLIC PROSECUTOR

[A. Cr. J. (Wilson J.) October 3, 1955]

[K. L. — Criminal Appeal No. 64 of 1955]

Penal Code s. 448 — House trespass with intent to annoy — Necessity to prove intent to annoy.

The appellant in this case was an employee of the Singer Sewing Machine Co. The complainant had bought a sewing machine on hire purchase and had paid over two-thirds of the value of the machine. As however he was late in paying the balance of the instalments the company decided to take possession of the machine. On April 14, 1955 the appellant and two of his friends went to the house of the complainant to collect the instalments due or alternatively to remove the machine. They entered the house and a discussion took place as to payment of the instalments. As no agreement was reached the appellant went to a room where the machine was kept, dragged it and took it away. The appellant was subsequently charged and convicted under s. 448 of the Penal Code of the offence of house trespass with intent to annoy the complainant.

Held: there was no evidence in this case that the appellant had an intention to annoy the complainant, even though he may have succeeded in fact in doing so and therefore the conviction must be quashed.

MAGISTRATE'S CRIMINAL APPEAL.

R. H. V. Rintoul for the appellant.

M. M. Hashim (Federal Counsel) for the respondent.

Wilson J.: — The appellant was charged with an offence contrary to Section 448 of the Penal Code. The learned Magistrate was of opinion that the action of the appellant constituted annoyance to the complainant and that, therefore, the charge was proved.

The point is not whether he annoyed the complainant, which I have no doubt he did, but whether, when he entered the property in the possession of the complainant, he intended to annoy him, or, having entered the property, whether he unlawfully remained there with intent to annoy.

On the facts of this case I could find no evidence that the appellant ever had an intention to annoy, even though he may have succeeded in fact in doing so.

I allowed the appeal and quashed the conviction and cancelled the order binding over the appellant to be of good behaviour for six months, or in default three months' imprisonment.

Appeal allowed.

Solicitors for the appellant: *Shearn, Delamore & Co.*